

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-12192-GAO

JON FIGLIOLINI,  
Petitioner,

v.

UNITED STATES OF AMERICA,  
Respondent.

ORDER GRANTING CERTIFICATE OF APPEALABILITY

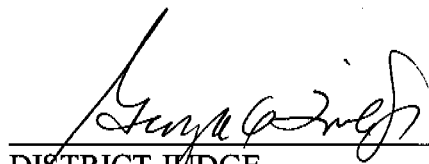
December 21, 2004

O'TOOLE, D.J.

This Court dismissed the petitioner's motion under 28 U.S.C. § 2255 because the issues presented had all been addressed and resolved adversely to him on direct appeal. The petitioner now has applied for a certificate of appealability as to three issues. Two of the identified issues – whether the claims in the motion were fully and fairly litigated on direct appeal and whether the Court of Appeals properly considered the claim of ineffective assistance on direct appeal – do not present substantial issues as to which jurists of reason could disagree. However, the third identified issue does. Accordingly, the application for a certificate of appealability is GRANTED as to the following issue, as phrased by the petitioner:

“Whether claims, now supported by new evidence, can be relitigated under 28 U.S.C. §2255 after the claims were raised on direct appeal and the First Circuit Court of Appeals ruled that there was no evidence on the ‘current record’ to support the claims?”

12/21/04  
DATE

  
DISTRICT JUDGE